



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable D. C. Greer
State Highway Engineer
Austin, Texas

Dear Sir:

Opinion No. 0-3361
Re: Legality of acceptance of
informal bids for completion
of work under defaulted con-
tract.

We acknowledge receipt of your letter of March 31, 1941, in which you request the opinion of this department upon the following fact situation:

"On October 21, 1940, the Highway Department entered into a contract with Sam Leal, Jr., for the construction of 10.723 miles of flexible base and triple asphalt surface treatment on Highway U. S. 21 in Lee County. The amount of the contract was \$76,322.85 and performance bond in that amount was furnished by the American Bonding Company of Baltimore, Maryland.

"On Friday, March 22, Sam Leal, Jr., the contractor, after having completed approximately 25 per cent of the work covered by the contract, advised our Resident Engineer by wire that he was defaulting his contract because he was financially unable to prosecute the work further. A copy of his wire was directed to the Bonding Company. On Saturday, March 29, a representative of the Bonding Company, during a conference with officials of the Highway Department, stated that the Bonding Company did not care to enter into contract for the completion of the project and requested the Highway Department to assume the completion in any manner it saw fit, as is provided by the contract specifications. During the conference, the Bonding Company representative requested that he be per-

mitted to secure informal bids from a number of contractors theretofore approved by the Highway Department for the completion of the project, with the understanding that the Highway Department would enter into agreement with the lowest bidder for the completion of the project as originally planned. Under this plan, the contractor, whose bid may be selected for the completion of the project, would furnish bond in the amount of his bid.

" . . . "

Provision for the submission to competitive bids of all contracts proposed to be made by the State Highway Department is made in Article 6674h, Vernon's Revised Civil Statutes of Texas. Article 6674j, reads as follows:

"The successful bidder or bidders shall enter into written contracts with said department, and shall give bond in such amount as is now provided by law, conditioned for the faithful compliance with his bid and performance of the contract and payable to the State Highway Department for the use and benefit of the State Highway Fund."

Item 8.7 of the contract specifications provides that in the event of abandonment of work or default of the contract by the contractor that the State Highway Department may take over the prosecution of work, appropriate or use any or all material and equipment on the ground as may be suitable, and enter into an agreement for the completion of the contract according to the terms and provisions thereof or use such other methods as in the opinion of the Engineer may be required for the completion of the contract in acceptable manner.

Analysis of the instant situation reveals that the contract was originally let and entered into under the authority of and in compliance with the applicable statutory provisions, bond in the amount of the contract being furnished by the American Bonding Company. Although the contractor has defaulted the State is fully protected by the bond and

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there is no occasion for the submission of competitive bids as required under Article 6674h, supra, before arrangements are entered into for the completion of the project. The Highway Department is authorized by Item 8.7 of the contract specifications to assume completion of the contract in whatever manner is acceptable under the existing circumstances. No contrary provision appears in the statutes and no method of procedure is there suggested. Article 6674h having already been complied with and the safeguards provided in that and the succeeding articles having already been brought into existence there would appear to be no necessity for the re-submission of competitive bids.

It is, therefore, the opinion of this department that the Highway Department may legally accept informal bids taken from qualified and approved contractors by the bonding company without advertising for such bids as provided by Article 6674h and enter into agreement with the low bidder for the completion of the Leal contract. We note that this procedure was requested and instigated by the bonding company, and we suggest that the request be reduced to writing, and that all subsequent transactions be reflected by written instruments. The application of this opinion, of course, is limited to the specific fact situation presented in your letter.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ross Carlton
 Ross Carlton
 Assistant

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APPROVED APR 9, 1941

George B. Mann
 ATTORNEY GENERAL OF TEXAS

